IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 278 of 2007

DATE OF DECISION: 31.7.2007

M/s Arisudana Spinning Mills Ltd.

…Appellant

Versus

C.I.T., Rishi Nagar, Aayakar Bhawan, Ludhiana

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. S.K. Mukhi, Advocate,
for the appellant-assessee.

M.M. KUMAR, J.

This order shall dispose of I.T.A. Nos. 278 and 279 of 2007 as similar facts are involved. However, the facts are being referred from I.T.A. No. 278 of 2007.

The assessee has approached this Court by filing the instant appeals under Section 260-A of the Income Tax Act, 1961 (for brevity, 'the Act'), challenging a common order dated 31.10.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench-A (for brevity, 'the Tribunal'), in ITA No. 565/Chandi/2001, in respect of the assessment year 1998-99 and ITA No. 639/Chandi/2004, in respect of the assessment year 2000-01.

The assessee is a Limited Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacture of knitted cloth from raw wool and trading of the goods produced. It had filed its return for the assessment year 1998-99 at

Rs. 36,27,866/-. The case was selected for scrutiny and notices under the Act were issued. The Assessing Officer observed that besides the activity of manufacturing of yarn, the assessee was also engaged in the trading of raw wool and knitted cloth, which in addition were being manufactured by the assessee. The income which was subjected to the claim of deduction under section 80-IA of the Act included profits derived from the trading of raw wool and knitted cloth also. The Assessing Officer issued notice to the assessee to explain as to why the claim for deduction under Section 80-IA of the Act in relation to the income derived from trading activity be not declined. After affording opportunity of hearing the Assessing Officer, vide order dated 29.1.2001 (A-2), has held that the income may fall within the head 'business income' but in so far as its eligibility for deduction under Section 80-IA of the Act is concerned, it is only the income derived by the assessee from the industrial undertaking which could be eligible for deduction under Section 80-IA of the Act. It has further been held that the profits derived from the trading of goods was not eligible to qualify because it could not be considered as *'derived from the industrial undertaking'* within the meaning of Section 80-IA of the Act.

Against the order of the Assessing Officer, dated 29.1.2001, the assessee preferred an appeal before the CIT (A), which was allowed, vide order dated 12.3.2001 (A-3), by observing as under:-

> " The first ground of appeal is general in nature and calls for no comments.

In the second ground of appeal, the appellant has contested the action of the AO in not allowing deduction u/s 80(IA) of the I.T. Act, 1961. This issue also came up for hearing before me in the preceding assessment year 1997-98 and the matter has been decided in favour of the appellant. The AO, while concluding his finding has stated that the facts and circumstances of case regarding claim of deduction u/s 80(IA) are similar to the facts of assessment year 1997-98 but as the appellate decision in the preceding year has not been accepted, deduction was not allowed. In view of detailed discussion in the appellate order for the preceding assessment year, the AO is directed to allow the said deduction u/s 80(IA) and accordingly this ground of appeal is allowed.

In ground No. 3, the appellant has contested the disallowance of Rs. 16,912/- made under the head "telephone expenses". On consideration of the matter it is held that various Benches of ITAT have taken a view that in the case of companies disallowance out of telephone expenses on account of use of telephone by the directors cannot be made and disallowance if any in the shape of perquisite value can only be considered in the hands of directors of the company. One such decision is in the case of Bharat Motor Parcel Services Vs. ITO (1992) reported at 44-TTJ-404 (Hyd.). Hence disallowance made is deleted and this ground of appeal is allowed."

The revenue challenged the aforementioned order of the CIT (Appeals) before the Tribunal on the ground that the issues involved in the instant case are covered by the judgment of this Court in the case of M/s Liberty Shoes Ltd. (ITA No. 140 of 2005, decided on 17.8.2006, wherein it has been held that an assessee would not be entitled for deduction under Section 80-IA of the Act in respect of profits derived from business of trading of goods. The Tribunal by placing reliance on the law laid down by Hon'ble the Supreme Court in the cases of **CIT v. Sterling Foods, (1999) 237 ITR 579** and **Pandian Chemicals Ltd. v. Commissioner of Income Tax, (2003) 262 ITR 278** allowed the appeal filed by the revenue and reversed the orders of the CIT (A). The findings of the Tribunal recorded in para 7 of the judgment, reads as under:-

> "7. We have considered the rival submissions carefully. At the outset we may state that in view of the authoritative decision of the Hon'ble Jurisdictional High Court in the case of Liberty Shoes Ltd. (supra), the issue before us is liable to be decided against the assessee and in favour of the revenue. The controversy before us revolves around as to whether or not the profits derived by the assessee from trading activity would constitute profits and gains derived from the industrial undertaking for the purposes of section 80IA of the Act. The industrial undertaking of the assessee business of sale and manufacture of yarn. The stand of the assessee is that in view of the presence of the expression 'any business' the profits from all kind of activity, even other

than the activity of manufacturing carried out by an industrial undertaking, would fall within the ambit of section 80IA of the Act. In our view, the presence of expression 'derived from' in section 80IA is the crux upon which hinges the outcome of the present dispute before us. The meaning of the said expression has been a subject matter of consideration of the Hon'ble Apex Court in the case of CIT v. Sterling Foods 237 ITR 537 (579?) (SC) and also subsequently in the case of Pandian Chemical Ltd. 262 ITR 278 (SC). The import of the judgment of the Apex Court is that the expression 'derived from' seeks to cover only receipts derived from the actual conduct of the business of industrial undertaking. Considered in this light, the fact situation in the instant case can be deciphered as follows. The industrial undertaking of the assessee is engaged in the manufacture of yarn and its on sale thereof. Additionally, the industrial undertaking also derives income by way of purchase and sale of goods manufactured by other concerns and derives income therefrom. Although such trading profits would certainly constitute the business income yet it cannot be said to have been derived from the business of an industrial undertaking, which is of manufacturing of yarn only. The stand of the assessee was that the goods traded-in was its raw material for the manufacturing process and the stock which was not immediately

required was sold and the resultant profits. That, therefore, such profits be considered as a part and parcel of the profits derived from the business of industrial undertaking. In our view the provisions of section 80IA of the Act when read as a whole do not leave any scope for ambiguity that it is only the profits and gains derived from the actual conduct of business of an undertaking i.e. carrying on of manufacture of production of articles or things which alone are eligible for claim of deduction under section 80IA of the Act. Moreover, in view of the authoritative pronouncement of the Hon'ble Jurisdictional High Court in the case of Liberty Shoes Ltd (supra) it is to be held that deduction under section 80IA of the Act will not be eligible in respect of profits derived from the business of trading of products of other concerns as the same does not qualify to constitute the profits and gains derived from industrial undertaking. Therefore, having regard to the legal position as enunciated by the Hon'ble Jurisdictional High Court in the case of Liberty Shoes Ltd (supra), the action of the Assessing Officer deserves to be upheld in denying claim of deduction under section 80IA with respect to the profits and gains derived by the assessee from trading of goods. As a result the order of the CIT(A) is set aside and that of the Assessing Officer is hereby restored."

After hearing the learned counsel, we are of the considered view that no question of law, much less a substantive

question of law warranting admission of the appeal would arise. The Tribunal has rightly allowed the appeal filed by the revenue by following the law laid down by Hon'ble the Supreme Court in the cases of Sterling Foods (supra) and Pandian Chemicals Ltd. (supra), which are fully applicable to the instant appeals. Therefore, we do not find any ground to interfere with the view taken by the Tribunal.

In view of the above, these appeals are wholly without merit. Dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 31, 2007
Pkapoor

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